

'SPEED POST'



F. No. 375/82/B/2019-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 07/01/2022

Order No. 11/2022-Cus dated 07/01/2022 of the Government of India passed by Sh. Sandeep Prakash, Principal Commissioner & Additional Secretary to the Government of India under Section 129DD of the Custom Act, 1962.

Subject : Revision Application filed under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal No. CC(A)Cus/D-I/Air/397/2019-20 dated 27.09.2019, passed by the Commissioner of Customs (Appeals), New Delhi.

Applicant : Sh. Mohd. Faizan, Delhi.

Respondent : The Commissioner of Customs, Airport & General, New Delhi

ORDER

A Revision Application No.375/82/B/2019-RA dated 19.12.2019 has been filed by Sh. Mohd. Faizan, Delhi (hereinafter referred to as the Applicant) against the Order-in-Appeal No. CC(A)Cus/D-I/Air/397/2019-20 dated 27.09.2019, issued by the Commissioner of Customs (Appeals), Delhi. The Commissioner (Appeals), vide the impugned Order-in-Appeal has rejected the appeal filed by the Applicant herein against the Order-in-Original No. 289/AS/JC/2018 dated 28.09.2018, passed by the Joint Commissioner of Customs, IGI Airport, new Delhi, on the ground that the Applicant did not make the mandatory pre-deposit of 7.5%, as per Section 129(E) of the Customs Act, 1962.

2. The brief facts of the case are that the Applicant arrived on, 17.11.2017, at IGI Airport from Dubai via Muscat and was intercepted near the exit gate after he had crossed the Customs Green Channel. After search of his person and baggage, three (03) gold bars, collectively weighing 349 Gms, valued at Rs.9,51,064/-, were recovered from his possession which were wrapped in blue carbon paper and further wrapped with black adhesive tape and concealed in the pocket of the Jeans worn by him. The Applicant admitted the recovery of the gold bars from his possession and claimed the ownership of the seized goods. The original authority, vide the aforesaid Order-in-Original 28.09.2018, denied the free allowance to the Applicant but allowed to redeem the confiscated goods on payment of fine of Rs. 2 Lakh under Section 125

of the Customs Act, 1962. A Penalty of Rs. 2 Lakh was also imposed under Section 112 & 114AA of the act, *ibid*. Aggrieved, the Applicant filed an appeal before the Commissioner (Appeals) who rejected the appeal as non-maintainable on the grounds that the Applicant did not make the mandatory pre-deposit.

3. The instant revision application has been filed mainly on the ground that the applicant has already deposited duty and made the pre-deposit vide TR-6 Challan No. 50079 dated 18.02.2018, before passing of the Order-in-Appeal; that no personal hearing was granted to the Applicant; that the redemption fine is on higher side and keeping in view the facts of the case, no penalty is imposable or a token penalty be imposed.

4. Personal hearing in, virtual mode, was held on 07.01.2022. Sh. S. S. Arora, Advocate, attended the hearing on behalf of the Applicant and highlighted that pre-deposit amount had been paid much before impugned OIA came to be passed. Hence matter may be remanded to the Commissioner (Appeals) for decision on merit. Sh. Charan, Singh, Superintendent appeared for the respondent department and has no objection.

5 The Government has examined the matter carefully. It is observed that the Commissioner (Appeals) has rejected the appeal on the ground that the Applicant

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F. No. 375/82/B/2019-RA

did not make the mandatory pre-deposit, as per Section 129E of the Customs Act, 1962. It is not disputed that being a mandatory condition the pre-deposit ought to have been made. Applicants have claimed that requisite pre-deposit had been made and the Commissioner (Appeals) did not take the notice thereof while passing the impugned order. A copy of TR-6 Challan No. 50079 dated 18.02.2018, evidencing the same, has been placed on record. Subject to verification thereof, it would be in the interest of justice that the matter is remanded to Commissioner (Appeals) with a direction to decide the appeal afresh, on merits.

6. In view of the above, the revision application is allowed by way of remand to Commissioner (Appeals), with directions as above.


(Sandeep Prakash)

Additional Secretary to the Government of India


Sh. Mohd. Faizan,
S/o Sh. Mohd. Jamil,
R/o H. No. C-7/164, Yamuna Vihar,
Bhajan Pura, Delhi -110053

Order No. 11 /2022-Cus dated 07/01/2022

Copy to:

1. The Commissioner of Customs (Appeals), New Custom House, Delhi-110037.
2. The Commissioner of Customs, Airport & General, New Custom House, New Delhi – 110037
3. Sh. S. S. Arora, Advocate, B-1/71, Safdarjung Enclave, New Delhi - 110029
4. PA to AS(RA)
5. Guard File.
6. spare copy.

ATTESTED


(Leelchmi Raghavan)
अनुसंधान अधिकारी / Section Officer
वित्त मंत्रालय (राज्य वित्त विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi